

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Charter Communications)	CSR 6488-E, 6490-E & 6491-E
)	
MCC Georgia LLC)	CSR 6549-E, 6557-E, 6662-E, 6665-E,
)	6669-E & 6680-E
)	
Mediacom Delaware LLC)	CSR 6663-E
)	
Mediacom Southeast LLC)	CSR 6640-E, 6656-E, 6682-E, 6683-E &
)	6685-E
)	
Telesat Acquisition LLC d/b/a Adelphia Cable)	CSR 6533-E & 6534-E
Communications)	
)	
Seventeen Petitions for Determination of Effective)	
Competition in Thirty-Five Local Franchise Areas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: June 30, 2005

Released: July 6, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers seventeen petitions which cable operators (“the “Cable Operators”) have filed with the Commission pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission’s rules for a determination that such operators are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,¹ as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.² The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.³

¹47 C.F.R. § 76.906.

²See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

³See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁴ Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁵ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁶ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁷ We further find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.⁸ The Cable Operators assert that they are the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS

⁴ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁵ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁶ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁷ *See* 47 C.F.R. § 76.905(g).

⁸ Charter Petition CSR 6488-E at 6-7; Charter Petition CSR 6490-E at 6-7; Charter Petition CSR 6491-E at 6-7; MCC Petition CSR 6549-E at 6 and Amendment to Petition at 6; MCC Petition CSR 6557-E at 6-7; MCC Petition CSR 6662-E at 6; MCC Petition 6665-E at 6-7; MCC Petition 6680-E at 7; Mediacom Delaware Petition CSR 6663-E at 6; Mediacom Southeast Petition CSR 6640-E at 6; Mediacom Southeast Petition CSR 6656-E at 6; Mediacom Southeast Petition CSR 6682-E at 6; Mediacom Southeast Petition CSR 6683-E at 6; Mediacom Southeast Petition 6685-E at 6. Charter Petitions CSR 6488-E/CSR 6490-E/CSR 6491-E and MCC Petitions CSR 6557-E/CSR 6680-E reported DBS subscribership on a five digit zip code basis that was adjusted based upon an allocation methodology previously approved by the Commission. *See, e.g., In re Petition for Determination of Effective Competition in San Luis Obispo County, California*, 17 FCC Rcd 4617 (2002); *Fibervision, Inc. Petition for Determination of Effective Competition in Laurel, MT and Park City, MT*, 17 FCC Rcd 16313 (2002). The remaining MCC and Mediacom reports were provided on a zip code plus four basis.

subscribership for those franchise areas.⁹ Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cable Operator's have demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

5. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if "fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system."¹⁰ Three Cable Operators listed on Attachment A (Charter CSR 6491-E, MCC Georgia CSRs 6669-E/6680-E, and Telesat CSRs 6533-E/6534-E) provided information showing that less than 30 percent of the households within its franchise area subscribe to its cable services. Accordingly, we conclude that the Cable Operators have demonstrated the existence of low penetration effective competition under our rules.

III. ORDERING CLAUSE

6. Accordingly, **IT IS ORDERED** that the petitions filed by Charter Communications, MCC Georgia LLC, Mediacom Delaware LLC, Mediacom Southeast LLC, and Telesat Acquisition LLC d/b/a Adelphia Cable Communications for a determination of effective competition in the communities listed on Attachment A **ARE GRANTED**.

7. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

8. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

⁹ *Id.*

¹⁰ 47 U.S.C. § 543(1)(1)(A).

¹¹ 47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition**Charter Communications: CSR 6488-E**

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Lake Park City	GA0397	29.5%	224	66

Charter Communications: CSR 6490-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Woodbury	GA0700	46.9%	454	213

Charter Communications: CSR 6491-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Aldora Town	GA0707	27.9%	43	12
Barnesville City	GA0212	29.5%	2079	614
Hampton City	GA0329	30.9%	1411	436
Jackson City	GA0552	46.8%	1510	707
Jenkinsburg	GA0816	34.2%	76	26
McDonough	GA0332	28.4%	3069	870
Milner City	GA0480	50.3%	189	95
Stockbridge	GA0955 GA0333	20.7%	3749	774

MCC Georgia LLC: CSR 6549-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Lowndes County	GA0210	21.9%	14655	3214

MCC Georgia LLC: CSR 6557-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Alapaha	GA0630	52.2%	270	141

MCC Georgia LLC: CSR 6662-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Colquitt	GA0200	26.9%	9832	2641

MCC Georgia LLC: CSR 6665-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Hazlehurst	GA0023	26.1%	1513	395
Jeff Davis County	GA0502	16.6%	3315	549

MCC Georgia LLC: CSR 6680-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Donalsonville	GA0244	35.4%	1008	357

Mediacom Delaware LLC: CSR 6663-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Pittsville	MD0105	15.9%	477	76
Willards	MD0106	15.4%	364	56

Mediacom Southeast LLC: CSR 6640-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Atmore	AL0114	23.7%	3148	746
Brewton	AL0117	28.9%	2216	641
East Brewton	AL0118	24.3%	1043	253

Mediacom Southeast LLC: CSR 6656-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Lucedale	MS0199	23.8%	916	218

Mediacom Southeast LLC: CSR 6682-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscriber+
Gulf Breeze	FL0373	16.3%	2377	387

Mediacom Southeast LLC: CSR 6683-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscriber+
Bay Minette	AL0162	20.5%	2739	560
Daphne	AL0170	18.5%	6563	1212
Fairhope	AL0160	18.6%	5345	995
Spanish Fort	AL0721	22.9%	2035	466

Mediacom Southeast LLC: CSR 6685-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscriber+
Frisco City	AL0338	16.3%	589	96
Monroeville	AL0156	19.4%	2687	522

Cable Operator Subject to Low Penetration Effective Competition**Charter Communications: CSR 6491-E**

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Lamar County	3401	427	12.6%

MCC Georgia LLC: CSR 6669-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Sumter County	5651	815	14.4%

MCC Georgia LLC: CSR 6680-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Decatur County	5936	855	14.4%
Seminole County	2423	157	6.5%

Telesat Acquisition LLC d/b/a Adelphia Cable Communications: CSR 6533-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Orange County	212021	28995	13.7%

Telesat Acquisition LLC d/b/a Adelphia Cable Communications: CSR 6534-E

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Osceola	36140	3353	.9%

CPR = Percent DBS penetration

+ = See Cable Operator Petitions